DETAILED ACTION

1.   Applicant's request for reconsideration of the finality of the rejection of the last

Office action is persuasive and, therefore, the finality of that action is withdrawn.

2.   Claims 1-4 and 6-14 are pending and have been examined.

Response to Arguments

3.   Applicant's arguments with respect to claims 4, 7, and 14, presented in the

telephonic interview conducted with the Applicant's Representative on 7-21-2008, have

been fully considered and are persuasive. The rejections of these claims have been

withdrawn.

4.   The indicated allowability of claims 11 and 12 are withdrawn in view of a further

consideration of the claim language in view of 35 USC Sec. 101.

Claim Rejections - 35 USC § 101

5.   35 U.S.C. 101 reads as follows:

> Whoever invents or discovers any new and useful process, machine, manufacture, or composition of
> matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the
> conditions and requirements of this title.

6.   Claims 11 and 12 are rejected under 35 U.S.C. 101 because the claimed

invention is directed to non-statutory subject matter.

Claim 11 is directed towards a computer-program product. However, there is no language in the claim that indicates the code is embodied in a computer-readable storage medium. Therefore the claim sets forth only functional descriptive language and is non-statutory since this does not fall into one of the classes of invention eligible for the grant of a US patent. Unless embodied in a computer-readable medium the software in and of itself cannot be considered as a computer component, and hence cannot effect a change of state of a processor to produce a useful or tangible result. From 2106.01: Computer-Related Nonstatutory Subject Matter: *Descriptive material can be characterized as either "functional descriptive material" or "nonfunctional descriptive material." In this context, "functional descriptive material" consists of data structures and computer programs which impart functionality when employed as a computer component. (The definition of "data structure" is "a physical or logical relationship among data elements, designed to support specific data manipulation functions." The New IEEE Standard Dictionary of Electrical and Electronics Terms 308 (5th ed. 1993).) "Nonfunctional descriptive material" includes but is not limited to music, literary works, and a compilation or mere arrangement of data. Both types of "descriptive material" are nonstatutory when claimed as descriptive material per se*, 33 F.3d at 1360, 31 USPQ2d at 1759. *When functional descriptive material is recorded on some computer-readable medium, it becomes structurally and functionally interrelated to the medium and will be statutory in most cases.*

Claim 12 is dependent on claim 11 and does not cure its deficiency. Therefore it is rejected on the same basis as claim 11.

Allowable Subject Matter

7.   Claims 1-4, 6-10, 13, and 14 are allowed.

Conclusion

8.   Any inquiry concerning this communication or earlier communications from the examiner should be directed to Paul E. Callahan whose telephone number is (571) 272-3869. The examiner can normally be reached on M-F from 9 to 5.

If attempts to reach the examiner by telephone are unsuccessful, the Examiner's supervisor, Emmanuel Moise, can be reached on (571) 272-3865. The fax phone number for the organization where this application or proceeding is assigned is: (571) 273-8300.

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/Paul Callahan/
October 28, 2008

/Emmanuel L. Moise/
Supervisory Patent Examiner, Art Unit 2437